

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**

Department of Employment Services

MURIEL BOWSER  
MAYOR



DEBORAH A. CARROLL  
DIRECTOR

COMPENSATION REVIEW BOARD

**CRB No. 15-083**

**PATRICIA CAMP,  
Claimant-Respondent/Cross Petitioner,**

v.

**DISTRICT OF COLUMBIA DEPARTMENT OF HEALTH,  
Self-Insured Employer-Petitioner.**

Appeal from a April 15, 2015 Order Awarding an Attorney's Fee  
By Administrative Law Judge Joan E. Knight.  
AHD No. PBL 08-096A, DCP No. 761010-0001-1999-0030

DEPT. OF EMPLOYMENT  
SERVICES  
COMPENSATION REVIEW  
BOARD  
2015 SEP 24 PM 11 13

(Decided September 24, 2015)

Harold L. Levi for Claimant  
Milena Mikailova for Employer

Before LINDA F. JORY, HEATHER C. LESLIE, AND JEFFREY P. RUSSELL, *Administrative Appeals Judges.*

LINDA F. JORY for the Compensation Review Board:

**DECISION AND REMAND ORDER**

This matter is an appeal of an attorney's fee award that was issued on April 15, 2015- following a formal hearing before an Administrative Law Judge (ALJ) in the Administrative Hearings Division (AHD) of the Department of Employment Services (DOES), the issuance of a Compensation Order (CO) on June 21, 2013, and subsequent appeals to the Compensation Review Board (CRB) and the District of Columbia Court of Appeals (DCCA).

Claimant appealed the June 21, 2015 CO to the CRB. The CRB issued a Decision and Order on September 26, 2013 affirming the June 21, 2013 CO. Claimant filed an appeal with the DCCA. The DCCA issued an Order on August 6, 2014, remanding the matter to DOES after determining that an error of law was made in the June 21, 2013 Compensation Order. Specifically, incorrect findings were made concerning Claimant's permanent disability status. On August 11, 2014, Claimant filed "Claimant's Statement Regarding the Issues to be Determined on Remand from the District of Columbia Court of Appeals and Petition to Reopen the Record to receive a

Relevant Additional Medical Report Ordered by Employer and Not Available at the Time of Camp's Formal Hearing.”

On August 14, 2014, the CRB issued a Remand Order noting that the Office of Risk Management (ORM) had not issued an administrative determination of Claimant's permanent disability status and instructing AHD to make findings with respect to the temporary total disability (TTD) claim. AHD issued a Compensation Order on Remand on December 18, 2014 reinstating TTD benefits from the date of termination, April 8, 2012 to the present and continuing.

Claimant's counsel filed with AHD a Fee Petition on January 13, 2015 and an Amendment and Supplement to Fee Petition on February 18, 2015. Counsel requested an attorney's fee award in the amount of \$30,360.00 for 126.50 hours of work; \$20,915.20 representing 20% of the retroactive TTD benefits owed to Claimant from the date of termination to the present and \$9,440.80 representing 20% of prospective TTD payments and causally related medical expenses.

Employer filed an Opposition asserting Claimant's Counsel was not entitled to a fee award payable immediately based on future benefits as prospective TTD payments. AHD issued an Attorney's Fee Order (AFO) on April 15, 2015. The ALJ ordered Employer to pay Counsel a fee in the amount of \$20,915.20 based on actual benefits secured to date (\$104,576.00) and noted that “if future benefits are secured on behalf of Claimant in this matter, Counsel can re-petition this body for a fee based on those benefits”. AFO at 3.

Employer seeks review of the AFO because it is not in accordance with 7 DCMR § 132.1, a regulation implementing the Comprehensive Merit Personnel Act (CMPA) D.C. Code §1-623.27. Claimant filed a Cross Appeal asserting:

1. Nothing in ORM rules prohibits an attorney from re-petitioning for additional attorney's fees provided counsel filed a time initial petition for fees.
2. It is not outside the purview of [AHD] to award attorney's fees that are to be paid prospectively based on future wage loss or medical benefits paid to a successful claimant.

#### ANALYSIS<sup>1</sup>

Employer asserts:

By ordering that Counsel could re-petition for attorney's fees if Claimant secures additional benefits in the future, the ALJ permitted Counsel to petition for a fee

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<sup>1</sup> When there is no evidentiary record, the Compensation Review Board's scope of review, as established by the District of Columbia Comprehensive Merit Personnel Act of 1978, as amended D. C. Code § 1-623.01(the Act), is limited to making a determination as to whether the decision under review is arbitrary, capricious, an abuse of discretion or otherwise not in accordance with the law. See 6 Stein, Mitchell & Mezines, ADMINISTRATIVE LAW §51.03 (2001).

beyond the thirty (30) days provided in 7 DCMR § 132.1. The ALJ did not have any statutory or regulatory authority to expand the amount of time for filing a fee petition. By doing so, she defied strong CRB precedent holding that 7 DCMR §132.1 requires a claim for fees to be filed within thirty (30) days after a Compensation Order has been issued.

Employer's Brief at 5.

Employer fails to support its position with any case precedent for its position that the thirty day time requirement should apply to a fee petition that has already been timely filed and awarded and this position is rejected by the Panel.

Claimant argues and we agree that:

nothing in §132.1 which prohibits subsequent petitions for fees filed more than thirty days after a compensation order as long as a petition was initially submitted in writing within thirty days of the issuance of the order in the first place.

\* \* \*

Consistent with *Martin* [v. DC Dept. of Corrections, CRB No. 08-212 (April 14, 2009)], Counsel did not request the immediate payment of the full \$30,360.00 which he sought. To the contrary, he appropriately requested that the amount in excess of 20% of the benefits already secured for Claimant be paid prospectively when and as payments are made to Claimant and until Counsel is paid the full amount of the fee to which he is entitled.

Claimant's Brief at 6.

In *Martin* the CRB stated:

In the instant case, rather than limiting the attorney fee to 20% of the disability benefit award amount secured by Petitioner up to the date of the Compensation Order (the "accrued amount"), the ALJ should have additionally provided that with each future periodic payment of disability compensation paid to Petitioner an additional payment of attorney's fees be made in the amount of 20% of the periodic disability payment paid at that time, until such time as Petitioner's counsel had received the entire fee approved or Petitioner is no longer receiving compensation, whichever first occurs.

With regard to Counsel's request for \$9,440.80 representing 20% of future benefits to be secured by Claimant the ALJ held that "it is not within the purview of [the AHD] to award a fee based on future benefits not yet received". AFO at 2.

While the Panel acknowledges that the ALJ did not limit the attorney fee to 20% of the amount secured to date, the Order does require that Claimant "re-petition" AHD for additional fees based on additional payment of benefits those benefits in order to obtain additional fees. This

requirement is not consistent with the CRB's analysis and conclusion in *Martin* and in the words of Claimant "avoids judicial economy concerns".

#### CONCLUSION AND ORDER

The ALJ's direction that if future benefits are secured on behalf of Claimant in this matter, Counsel can re-petition for a fee based on those benefits, is not in accordance with the law. That portion of the fee award is accordingly VACATED and the matter is REMANDED to AHD for the ALJ to order that with each future periodic payment of disability compensation paid to Claimant an additional payment of attorney's fees be made in the amount of 20% of the bi-weekly disability payment paid at that time, until such time as Claimant's counsel has received \$9,440.80 or Claimant is no longer receiving compensation, whichever first occurs.

*So ordered.*